

**INDEMNITY AGREEMENT**

**THIS INDEMNITY AGREEMENT** (the "Agreement") made as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the "Execution Date"),

**BETWEEN:**

El Mecanico LLC of 45415 28th St E, Lancaster, CA 93535, USA, and  
Samuel Rodriguez of 45415 28th St E, Lancaster, CA 93535, USA  
(collectively and individually the "Indemnitee")

OF THE FIRST PART

and

\_\_\_\_\_ of \_\_\_\_\_,  
(the "Indemnifier")

OF THE SECOND PART

**BACKGROUND:**

1. The Indemnitee desires protection against any personal liability, claim, suit, action, loss, or damage that may result from the Indemnitee's participation in the Service.
  
2. The Indemnifier wishes to minimize any hardship the Indemnitee might suffer as the result of any personal liability, claim, suit, action, loss, or damage that may result from the Indemnitee's participation in the Service.

**IN CONSIDERATION** and as a condition of the Indemnifier and the Indemnitee entering into this Agreement and other valuable consideration, the receipt and sufficiency of which consideration is acknowledged, the Indemnifier and the Indemnitee agree as follows:

**Definitions**

1. The following definitions apply in the Agreement:
  - a. "Service" means the following:  
The indemnifier has hired the indemnitee to perform auto repairs on his/her auto(s).

- b. "Expenses" means all costs incurred in the defense of any claim or action brought against the Indemnitee including lawyers' fees.
- c. "Notice of Claim" means a notice that has been provided by the Indemnitee to the Indemnifier describing a claim or action that has or is being brought against the Indemnitee by a Third Party.
- d. "Notice of Indemnity" means a notice that has been provided by the Indemnitee to the Indemnifier describing an amount owing under this Agreement by the Indemnifier to the Indemnitee.
- e. "Parties" means both the Indemnitee and the Indemnifier.
- f. "Party" means either the Indemnitee or the Indemnifier.
- g. "Third Party" means any person other than the Indemnifier and the Indemnitee.

**Indemnification**

- 2. The Indemnifier will hold harmless and indemnify the Indemnitee against any and all claims and actions arising out of the participation of the Indemnitee in the Service, including, without limitation, Expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any liability, suit, action, loss, or damage arising or resulting from the Indemnitee's participation in the Service, subject to the limits on indemnification described in the section titled Exceptions to Indemnification. Where prohibited by law, the above indemnification does not include indemnification of the Indemnitee against a claim caused by the negligence or fault of the Indemnitee, its agent or employee, or any third party under the control or supervision of the Indemnitee, other than the Indemnifier or its agent, employee or subcontractor.
- 3. In the case of a criminal proceeding, the Indemnifier will indemnify the Indemnitee against all amounts including, without limitation, Expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by the Indemnitee subject to the limits on indemnification described in the section titled Exceptions to Indemnification.

**Exceptions to Indemnification**

- 4. The Indemnitee will not be entitled to indemnification from the Indemnifier for any Expenses, judgments, fines, settlements and other amounts incurred as the result of the Indemnitee's participation in the Service where:

- a. in the case of a civil claim, the Indemnitee did not act in good faith and in a reasonable manner;
  - b. in the case of a criminal action, the Indemnitee had reasonable cause to believe its conduct was unlawful;
  - c. the actions or conduct of the Indemnitee constituted willful misconduct or was knowingly fraudulent or deliberately dishonest;
  - d. the Indemnitee will or has received payment under a valid and collectible insurance policy or under a valid and enforceable indemnity clause, bylaw or agreement, except where payment under this insurance policy, clause, bylaw or agreement is not sufficient to fully indemnify the Indemnitee in which case the Indemnifier will be responsible for any shortfall in payment received; or
  - e. an action or proceeding was initiated in whole or in part by the Indemnitee whether alone or along with one or more other claimants unless the action or proceeding has the written consent of the Indemnifier.
5. If one Indemnitee is not entitled to indemnification under this section then all Indemnitees are not entitled to indemnification.

**Notice of Claim**

6. In the event of any claim or action, the Indemnitee will promptly provide the Indemnifier with written notice of the claim or action and will notify the Indemnifier within five business days of the commencement of any legal proceedings relating to the claim or action. The Indemnitee will provide the Indemnifier with all available information known to the Indemnitee relating to the claim or action.

**Authorization of Indemnification**

7. In any case where the Indemnitee requires indemnification, the Indemnifier will make the determination of whether indemnification is appropriate having given consideration to the terms described in the Exceptions to Indemnification section. If the Indemnitee disagrees with the determination of the Indemnifier then the matter must be referred for review and determination to independent legal counsel reasonably satisfactory to the Indemnitee. In all cases the Indemnifier will bear all costs of any independent determination.

8. The Indemnifier will bear the burden of proving that indemnification is not appropriate.
9. The termination of any claim or action by judgment, order, settlement, conviction or upon an admission of guilt or its equivalent will not, of itself, create a presumption that the person did not act in good faith and in a reasonable manner or, in the case of a criminal action, that the Indemnitee had reasonable cause to believe that the Indemnitee's conduct was unlawful.

**Assumption of Defense**

10. On being notified of any impending action or claim, the Indemnifier may, at its own Expense, participate in the defense of any action or claim and may, alone or with any other indemnifying party, assume the defense against the action or claim using counsel that are reasonably satisfactory to the Indemnitee.
11. Once the Indemnifier has notified the Indemnitee of the intention to assume the defense, the Indemnifier will no longer be liable to the Indemnitee for any further Expenses subsequently incurred by the Indemnitee in relation to the defense of the claim. Once the Indemnifier provides notice to the Indemnitee that the defense of claim has been assumed by the Indemnifier, the Indemnitee may employ or continue to employ its own legal counsel however any fees or Expenses incurred by the Indemnitee subsequent to the notice of assumption of defense by the Indemnifier will be the sole responsibility of the Indemnitee.

**Failure to Defend**

12. If the Indemnifier elects not to assume the defense against the claim or action then the Indemnitee may defend against the claim or action in any manner the Indemnitee deems appropriate. The Indemnifier will promptly reimburse the Indemnitee for Expenses, judgments, fines, settlements and any other amounts actually and reasonably incurred in connection with the defense of the claim or action subject to the limits on indemnification described in the section titled Exceptions to Indemnification.

**Settlement and Consent of Indemnifier**

13. The Indemnitee will not settle any claim or action without first obtaining the written consent of the Indemnifier. The Indemnifier will not be liable for any amounts paid in settlement of any claim or action where written consent of the Indemnifier was not first obtained. The Indemnifier will not unreasonably withhold consent to any settlement.

**Settlement and Consent of Indemnitee**

14. The Indemnifier will not settle any claim or action without first obtaining the written consent of the Indemnitee. The Indemnitee will not unreasonably withhold consent to any settlement.

**Cooperation**

15. The Indemnifier agrees to cooperate in good faith and use best efforts to ensure that the Indemnitee is indemnified and reimbursed for any and all Expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with the defense of any claim or action resulting from the participation of the Indemnitee in the Service.
16. The Indemnitee agrees to cooperate in good faith and provide any and all information within the Indemnitee's power as required for the defense of any claim or action and also to provide any and all information within the Indemnitee's power as required to help in a determination of indemnification as described under the Authorization of Indemnification section.

**Expenses**

17. No costs, charges or Expenses for which indemnity will be sought under this Agreement may be incurred without the Indemnifier's written consent. Any required consent must not be unreasonably withheld.
18. All reasonable Expenses incurred by the Indemnitee to enforce this Agreement, and all costs of defending any Third Party claims or actions brought against the Indemnitee under this Agreement will be the sole responsibility of the Indemnifier subject to the limits on indemnification described in the section titled Exceptions to Indemnification.

**Advances of Expenses**

19. At the written request of the Indemnitee, the Indemnifier will advance to the Indemnitee any Expenses, including lawyers' fees, incurred by the Indemnitee in defending any action brought against the Indemnitee. Where reasonable, and to minimize hardship to the Indemnitee, advance payments may be made prior to the disposition of any claim.
20. The Indemnitee agrees to repay to the Indemnifier any advance payments of Expenses where a determination is ultimately made that the Indemnitee is not entitled to indemnification for reasons described under the Indemnification and the Exceptions to Indemnification sections.

**Payment**

21. All payments made by the Indemnifier to the Indemnitee will be made in full in immediately available funds within sixty days of receipt of Notice of Indemnity from the Indemnitee and without deduction for any counterclaim, defense, recoupment, or set-off.
22. Any Notice of Indemnity sent by the Indemnitee to the Indemnifier must be made in writing and contain a full listing of the items to be covered in the payment. Any payment made by the Indemnifier to the Indemnitee will contain a listing of items covered under the payment.

**Enforcement**

23. If any right or remedy claimed by the Indemnitee under this Agreement is denied or is not paid by the Indemnifier, or on its behalf, within sixty days after a written Notice of Indemnity has been submitted by the Indemnitee to the Indemnifier, the Indemnitee may then bring suit against the Indemnifier to recover any unpaid amounts and if successful in whole or in part, the Indemnitee will be entitled to be paid any and all costs related to resolving the claim.
24. Where a determination as described under Authorization of Indemnification concludes that the Indemnitee's behavior is not entitled to indemnification, this will not create a presumption that the Indemnitee is not entitled to indemnification under this Agreement.

**Insurance**

25. The Indemnifier, at its sole discretion, will make the good faith determination whether or not it is reasonable for the Indemnifier to obtain liability insurance against its potential liability in protecting the Indemnitee under this Agreement. The Indemnifier will select an insurer with a reliable reputation and, among other considerations, will weigh the costs of obtaining this insurance coverage against the protection afforded by this coverage.

**Duration**

26. The rights and obligations of the Indemnitee and the Indemnifier under this Agreement will continue:
  - a. so long as the Indemnitee is or will be subject to any possible claim or threatened, pending or completed action, suit or proceeding, whether civil, criminal, arbitrational, administrative or investigative that results from the participation of the Indemnitee in the Service; or

- b. until terminated by an agreement in writing signed by both the Indemnifier and the Indemnitee.

**Unlimited Indemnification**

- 27. Under this Agreement, indemnification will be unlimited as to amount.

**Full Release**

- 28. Only payment and satisfaction in full of all amounts and charges payable under this Agreement and the due performance and observance of all terms, covenants and conditions of this Agreement will release the Indemnifier and the Indemnitee of their obligations under this Agreement.

**Further Action**

- 29. No action or proceeding brought or instituted under this Agreement and no recovery from that action or proceeding will be a bar or defense to any further action or proceeding which may be brought under this Agreement by reason of any further failure in the performance and observance of the terms, covenants and conditions of this Agreement.

**Subrogation**

- 30. In the event that any indemnity payment is made under this Agreement, the Indemnifier will be subrogated to the extent of this payment to all of the rights of recovery of the Indemnitee. The Indemnitee will take all action required and provide all information necessary to secure these rights and to fully enable the Indemnifier to take any action to enforce these rights in the recovery of the indemnity payment.

**Amendments**

- 31. This Agreement may only be amended, terminated or cancelled by an instrument in writing, signed by both the Indemnifier and the Indemnitee.

**Assignment of Indemnifier Rights and Obligations**

- 32. The rights and obligations of the Indemnifier as existing under this Agreement may not be assigned, in whole or in part, without the prior written consent of the Indemnitee.

**Assignment of Indemnitee Rights and Obligations**

- 33. The rights and obligations of the Indemnitee as existing under this Agreement may not be assigned, either in whole or in part, without the prior written consent of the Indemnifier.

**Confidentiality**

34. Both the Indemnifier and the Indemnitee and their respective employees and agents will at all times maintain confidential all information pertaining to this Agreement except where required to disclose under any regulatory or other competent authority or as otherwise required by law.

**Notices**

35. Any notices or deliveries required in the performance of this Agreement will be deemed completed when hand-delivered, delivered by agent, or seven days after being placed in the post, postage prepaid, to the Parties to this Agreement at the addresses contained in this Agreement or as the Parties may later designate in writing.

**Governing Law**

36. This Agreement will be governed by and construed in accordance with the laws of the State of California.

**Jurisdiction**

37. The courts of the State of California are to have jurisdiction to decide and settle any dispute or claim arising out of or in connection with this Agreement.

**General Provisions**

38. This Agreement contains all terms and conditions agreed to by the Indemnifier and the Indemnitee. Statements or representations which may have been made by either Party in the negotiation stages of this Agreement may in some way be inconsistent with this final written Agreement. All such statements are declared to be of no value to either Party. Only the written terms of this Agreement will bind the Parties.
39. Any failure of either Party to enforce any of the terms, covenants and conditions in this Agreement does not infer or permit a further waiver of that or any other right or benefit under this Agreement. A waiver by one Party of any right or benefit provided in this Agreement does not infer or permit a further waiver of that right or benefit, nor does it infer or permit a waiver of any other right or benefit provided in this Agreement.
40. This Agreement will pass to the benefit of and be binding upon the Parties' respective heirs, executors, administrators, successors, and permitted assigns.
41. The clauses, paragraphs, and subparagraphs contained in this Agreement are intended to be read and construed independently of each other. If any part of this Agreement is held to be invalid, this invalidity will not affect the operation of any other part of this Agreement.

42. All of the rights, remedies and benefits provided in this Agreement will be cumulative and will not be exclusive of any other such rights, remedies and benefits allowed by law or equity that the Parties may have now or may acquire in the future.

43. Time is of the essence in this Agreement.

44. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which together will be deemed to be one and the same instrument.

45. Headings are inserted for the convenience of the Parties only and will not be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender include the feminine gender and vice versa. Words in the neuter gender include the masculine gender and the feminine gender and vice versa.

**IN WITNESS WHEREOF** the Indemnitee and the Indemnifier have duly affixed their signatures under hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

El Mecanico LLC (Indemnitee)

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Samuel Rodriguez (Indemnitee)

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
\_\_\_\_\_  
(Indemnifier)

